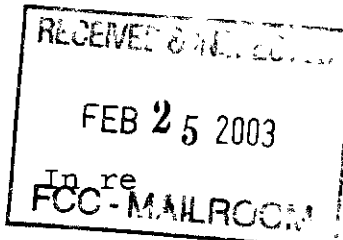


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BEFORE THE
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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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ACCOUNT PROCESSING
GROUP-DPT/RPT/TMT

Phoenix Broadcasting, Inc.)	Fee Control Number
Stations KSWD and KPFN, Seward,)	00000RROG-03-040
Alaska, Request for Waiver of)	
FY 2000 Regulatory Fees)	

To: the Commission

APPLICATION FOR REVIEW

Phoenix Broadcasting, Inc. ("Phoenix"), by its attorney, hereby seeks review pursuant to Section 1.115 of the Commission's Rules of the letter ruling by the Chief Financial Officer in the Office of the Managing Director issued January 31, 2003 (the "Ruling") which denied Phoenix' petition for reconsideration of an decision by the Office of the Managing director denying Phoenix' request for waivers of the FY 2000 regulatory fees for Stations KWSN and KPFN, Seward, Alaska.

I. Questions Presented

The following questions are presented:

1. Was the denial of Phoenix' request for waiver of regulatory fees in question the product of reasoned decision making?
2. Whether it is fair, just and or appropriate for the FCC to require a licensee to pay regulatory fees which, in theory at least, are based on the value of the licenses to the licensee when, as a direct consequence of the

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FCC's unwillingness or inability to enforce its rules in a reasonably timely manner, the value of the licenses has been greatly diminished?

II. Reasons Why Commission Review of the Questions is Warranted

Commission review of the Questions presented is warranted because they involve a questions of law and policy that have never been addressed, let alone resolved by the Commission.

III. Discussion

Phoenix' request for a waiver of the FY 2000 regulatory fees with respect to the Stations was predicated on the fact that the Stations have been placed in precarious financial condition due and have suffered sever economic harm as a consequence of the Commission's failure to enforce its February 2000 decision requiring Peninsula Communications, Inc. ("Peninsula") to cease operating two FM translator's in Seward, Alaska, (the "Translators") and the Commission's subsequent failure to act expeditiously on its May 2001 order directing Peninsula to show cause as to why it should not be required to cease operating the Translators. The waiver request was denied on the grounds that Phoenix had not submitted adequate evidence to establish "financial hardship."

In its Petition for Reconsideration, Phoenix pointed out that the February 2000 Commission decision referred to by Phoenix

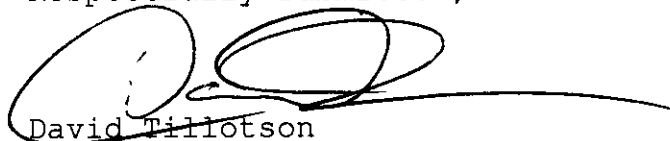
in its waiver request, *Peninsula Communications, Inc.*, FCC 00-45 released February 14, 2000 (the "Feb 2000 Decision"), the Commission found that the Translators were "taking between \$4,000 and \$6,000 per month in radio revenues out of Seward, which is a community of fewer than 5,000 people with limited sources of advertising revenue" and, consequently, it held that continued operation of the Translators "would be a clear detriment to the continued viability of full service broadcast stations licensed to Seward." Thus, the Feb 2000 Decision stood as a clear finding by the Commission that the Stations were suffering significant financial hardship, so significant as to place their continued viability in doubt, as a consequence of the operation of the Translators. Based upon this finding, Phoenix argued that no further evidence that the Stations were suffering financial hardship and were in "precarious financial condition" was required in order to justify grant of the requested waiver.

Having found that the Seward Stations' very viability was placed in jeopardy by Peninsula's operation of the Translators, the Commission allowed Peninsula openly to defy the ordering clauses of the Feb Decision for more than 15 months, during which time the Translators continued to take revenues out of the Seward market that the Stations desperately needed to survive. Finally, on May 18, 2001, the Commission acted with respect to the

Translators and several other translators operated by Peninsula which were the subject of the Feb Decision. *Peninsula Communications, Inc.* FCC 01-159 released May 18, 2001 (the "May Decision"). In the May Decision, the Commission concluded that it had not used the correct procedural means to require Peninsula to cease operating the Translators and it ordered Peninsula to show cause why its licenses for the Translators should not be modified to discontinue the previously granted waivers of the Commission's rules with respect to translators without which the Translators could not lawfully be operated. The Commission promised that if Peninsula were to protest the proposed modification of its licenses for the Translators, it would "rule on the matter *expeditiously*." [Emphasis added]. Peninsula protested the proposed modification of the licenses within the thirty day protest period following release of the May Decision provided for in Section 316 of the Communications Act. It is now more than 18 months since that protest was filed, and still the Commission has not acted on the "show cause" order. Even by Commission standards, the Commission clearly has not kept its promise to act "expeditiously." And during the more than 18 months and counting of Commission inaction, the Stations continue to suffer severe financial harm from the operation of the Translators.

Regulatory fees supposedly are predicated on the value of licensees to regulatees. They are also part of a structure devised by Congress for defraying the costs of the Commission's regulatory operations. The Commission's failure to follow through on its Feb Decision and its subsequent failure to act "expeditiously" following its May Decision has devalued the licenses for the Stations towards worthlessness. In fact, the only reason that Phoenix continues to operate the Stations is that it continues to hope that the Commission will enforce its rules and require the Translators to cease operating, and thereby make it possible for the Stations to eek out a profit in Seward notwithstanding the community's small advertising base. In these circumstances, waiver of the regulatory fees for the Seward Stations based on financial hardship was clearly warranted. Moreover, as the Commission has failed to fulfill its obligations to enforce its own Decisions and Rules, it is adding insult to injury to expect Phoenix to pay regulatory fees to defray the Commission's costs for services that it has not performed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Tillotson", with a long horizontal line extending to the right.

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February 18, 2003